



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200919071

Uniform Issue List: 408.03-00

FEB 10 2009

SE:T: EP: RA: T3

Legend:

Taxpayer A =

Amount M =

IRA X =

IRA Y =

Financial Institution F =

Date 1 =

Date 2 =

Dear :

This is in response to your letter dated September 13, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A asserts that on Date 1, he received a distribution of Amount M from IRA X. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to his erroneous belief that the rollover period was 90 days instead of 60 days.

Taxpayer A intended to complete a rollover of the distribution of Amount M. However, Taxpayer A believed he had 90 days within which to complete the rollover. By the time Taxpayer A realized his mistake, the 60-day rollover period had expired. Taxpayer A arranged for a rollover of Amount M with Financial Institution F and deposited Amount M into IRA Y on Date 2, which was beyond

the expiration of the 60-day rollover period. Taxpayer A subsequently wrote to the Internal Revenue Service and requested a ruling to obtain a waiver of the 60-day rollover period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount M contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A has not presented any evidence as to how any of the factors outlined in Rev. Proc. 2003-16 caused his failure to timely roll over Amount M. Rather, Taxpayer A has admitted that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due solely to his erroneous belief that the rollover period was 90 days instead of 60 days.

Thus, the Service will not grant any extension to the 60-day rollover period of Code section 408(d)(3)(A) in this case concerning the distribution of Amount M on Date 1 from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

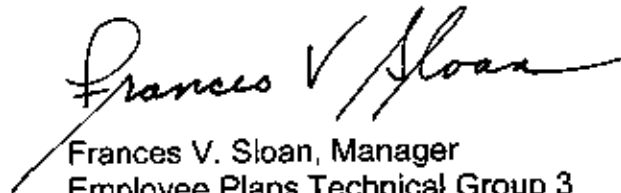
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact XXXXX

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose